IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN
WRIT PETITION NO.225 OF 2001

Kishore D. Rane ..Petitioner.

Vs.

The High Court of Judicture
at Bombay & Ors. ..Respondents.

Mr.Prasanna Kuty for the Petitioner.

Mr.R.M.Sawant, Government Pleader for the Respondents.

CORAM: A.P.SHAH AND
S.J.VAZIFDAR, JJ.
DATED: 23RD FEBRUARY, 2005

P.C. :

Respondent Nos.2 to 18 are Section Officers attached to the High Court, in the Office of the Prothonotary and Senior Master. Respondent Nos.19 and 20 are the Section Officers attached to the Office of the Official Liquidator of the High Court. Respondent No.21 is the State of Maharashtra.

2. The Petitioner has filed the Petition for a Writ of Mandamus, directing the first Respondent to accord him seniority above that of Respondent Nos.2 to 18.

3. The Petitioners' case is that the High Court

wrongly rejected his representation against an allegedly wrongful fixation of his seniority in the cadre of Section Officer and that the High Court has wrongly shown Respondent Nos.2 to 18 as seniors to him.

4. The Petitioners' joined the services of the High Court in 1985 as a Clerk. He passed all the departmental examinations and was promoted to the post of Assistant in the year 1993. After passing the Higher Standard Departmental Examination, he was promoted as Section Officer with effect from 28.12.1998 alongwith Respondent Nos.2 and 4. According to the Petitioner, though he was promoted alongwith Respondent Nos.2 and 4 as a Section Officer, he was wrongly shown as junior to them.

5. The Petitioner has referred to certain guidelines issued by the Chief Justice in respect of fixation of seniority. According to him, under the guidelines the promotion from the post of Clerk-Typist to the post of Assistant Superintendent was to be on the basis of Seniority-cum-Merit. The promotion from the post of Assistant Superintendent to the post of Section Officer, was, according to him, on the basis of Merit-cum-Seniority. He

further states that as per the guidelines the selection is to be made on the basis of the knowledge of the candidate regarding the rules, his character, conduct and record and certain other considerations as well.

6. The Petitioner has contended before us that as he secured higher marks in the Higher Standard Departmental Examination than Respondent Nos.2 to 17, he was entitled to seniority over them.

7. We are unable to accept this contention of the Petitioner. None of the guidelines referred by him, indicate that seniority is to be determined on the basis of the number of marks obtained by a candidate at the examination. Even if we assume that passing the examination is a criteria for a candidate to be eligible to be considered for promotion, it does not necessarily follow that a candidate with higher marks is entitled to seniority qua the candidates with lower marks.

8. The Petitioner’s alternative case is that he is even otherwise entitled to the seniority over Respondent Nos.5 to 18 as they were not confirmed in the post of Section Officer. His grievance is that

though Respondent Nos.5 to 18 are not confirmed in the post of Section Officer, they have been shown as senior to him. He also seeks to support his case on the basis that Respondent Nos.5 to 17 have not passed the Departmental Examination as contemplated under the rules. According to the Petitioner, Respondent Nos.5 to 17 are not entitled to exemption as none of them have attained the age of 45 years.

9. The Petitioner has raised various other contentions which, in view of the order we intend passing, we do not find necessary to elaborate on at this stage. It is pertinent to note only one grievance at this stage and that is that according to the Petitioner, the High Court has not considered his detailed representation in regard to his claim of seniority. The representation was made by a letter dated 11.3.1999. That representation was rejected by a letter dated 16.10.1999 addressed by the Prothonotary and Senior Master. The Petitioner therefore made a further representation by a letter dated 6.1.2000. The representation was rejected by a memorandum dated 4.5.2000 on the ground that the mere fact that the Petitioner secured higher marks than the other officers did not entitle him to seniority. As we have stated earlier, we are in

respectful agreement with the same. However, the Petitioner has raised various other contentions as well.

10. It appears that there was some difficulty in the implementation of the rules and the holding of the examinations and we have noticed the same in our order dated 17.2.2005 in Writ Petition No.2156 of 1992. There are various reasons for the same. Apparently, in certain posts, the procedure of regularisation has not been completed in respect of all the officers, who have been on the said posts for a considerably long time on an ad-hoc basis only.

11. In view of the aforesaid and with a view not to leave any scope for grievance on the part of the Petitioner, we pass the following order :

i) We would request Respondent No.1 to treat the Writ Petition and any further submissions that the Petitioner may make, within four weeks from today, as a comprehensive representations in respect of his grievances and decide the same a fresh.

ii) It shall be open to Respondent No.1 to consider regularising from an appropriate date the posts held by the various officers presently on an ad-hoc basis and thereafter determine the seniority list.

iii) The Writ Petition is accordingly disposed of. There shall be no order as to costs.